

ESTTA Tracking number: **ESTTA665413**Filing date: **04/07/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213597
Party	Defendant Tigercat International Inc.
Correspondence Address	CANDACE LYNN BELL ECKERT SEAMANS CHERIN & MELLOTT LLC 50 S 16TH STREET, 22ND FLOOR PHILADELPHIA, PA 19102 2523 UNITED STATES cbell@eckertseamans.com, rjacobsmeadway@eckertseamans.com, lscol-lon@eckertseamans.com
Submission	Other Motions/Papers
Filer's Name	Candace Lynn Bell
Filer's e-mail	cbell@eckertseamans.com, rjacobsmeadway@eckertseamans.com, afleisher@eckertseamans.com
Signature	/Candace Lynn Bell/
Date	04/07/2015
Attachments	DECLARATION OF CANDACE LYNN BELL ISO MOTION FOR SANCTIONS (M1356333).pdf(143998 bytes) EXHIBIT A TO BELL DECLARATION ISO MOTION FOR SANCTIONS (M1355667).pdf(347166 bytes) EXHIBIT B TO BELL DECLARATION ISO MOTION FOR SANCTIONS (M1355668).pdf(293977 bytes) EXHIBIT C TO BELL DECLARATION ISO MOTION FOR SANCTIONS (M1355669).pdf(425380 bytes) EXHIBIT D TO BELL DECLARATION ISO MOTION FOR SANCTIONS (M1355670).pdf(312544 bytes) EXHIBIT E TO BELL DECLARATION ISO MOTION FOR SANCTIONS (M1355671).pdf(137852 bytes) EXHIBIT F TO BELL DECLARATION ISO MOTION FOR SANCTIONS (M1356300).pdf(153518 bytes) EXHIBIT G TO BELL DECLARATION ISO MOTION FOR SANCTIONS (M1356301).pdf(759203 bytes)

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED ELECTRONICALLY TO THE COMMISSIONER FOR
TRADEMARKS - [HTTP://ESITA.USPTO.GOV/FILING-TYPE.JSP](http://esita.uspto.gov/filing-type.jsp)
BY 

DATE: April 7, 2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CATERPILLAR INC.,	:	
	:	
OPPOSER,	:	
	:	
v.	:	Opposition No. 91213597
	:	
TIGERCAT INTERNATIONAL INC.	:	
	:	
APPLICANT.	:	

**DECLARATION OF CANDACE LYNN BELL IN SUPPORT OF
APPLICANT'S MOTION FOR SANCTIONS AND SUSPENSION OF PROCEEDINGS**

1. I am a citizen of the United States, over 18 years old, and a resident of Erie County in the State of New York.
2. I am an attorney of record in this case.
3. Attached as Exhibit A to this declaration is a true and correct copy of a letter sent by me to Christopher P. Foley of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, counsel for Caterpillar on March 18, 2015 referencing Caterpillar's March 6, 2015 Supplemental Responses to Tigercat International Inc.'s First Set of Interrogatories and First Set of Requests for Production of Documents.
4. Attached as Exhibit B to this declaration is a true and correct copy of a letter sent by Christopher P. Foley, counsel for Caterpillar, to me on March 23, 2015 referencing my letter of March 18, 2015.

5. Attached as Exhibit C to this declaration is a true and correct copy of a letter sent by me to Christopher P. Foley, counsel for Caterpillar, on March 27, 2015 referencing his letter of March 23, 2015.

6. Attached as Exhibit D to this declaration is a true and correct copy of a letter sent by Christopher P. Foley, counsel for Caterpillar, to me on April 1, 2015 responding to my March 27, 2015 letter.

7. Attached as Exhibit E to this declaration is a true and correct copy of a letter sent by me to Christopher P. Foley, counsel for Caterpillar, on April 2, 2015 in response to his April 1, 2015 letter.

8. Attached as Exhibit F to this declaration is a true and correct copy of a letter sent by Christopher P. Foley, counsel for Caterpillar, to me on April 2, 2015 in response to my April 2, 2015 letter regarding discovery.

9. Attached as Exhibit G to this declaration is a true and correct copy of Caterpillar's Supplemental Response to Applicant's First Set of Interrogatories Nos. 9, 11 and 12 dated April 3, 2015.

I declare under penalty of perjury that the foregoing is true and correct.


Candace Lynn Bell

Executed on: April 7, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Declaration of Candace Lynn Bell in Support of Applicant's Motion for Sanctions was served on counsel for the Opposer at the location and on the date listed below via U.S. Mail:

Christopher P. Foley
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Ave., N.W.
Washington, DC 20001-4413
Christopher.foley@finnegan.com

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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
2 Seaport Boulevard
Boston, MA 02210
Laura.johnson@finnegan.com

Dated: April 7, 2015

By: _____

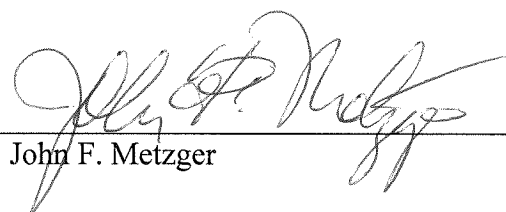

John F. Metzger

EXHIBIT A



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Candace Lynn Bell, Esq.
716-835-0240
cbell@eckertseamans.com

March 18, 2015

Via Email

christopher.foley@finnegan.com

Christopher P. Foley
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190-5675

Re: Caterpillar, Inc. v Tigercat International, Inc.
Opposition No. 91213597
Deficiencies in Caterpillar's Supplemental Discovery Responses
Our File No: 303621 – 00011

Dear Chris:

This letter has reference to Caterpillar Inc.'s March 6, 2015 Supplemental Responses to Tigercat International Inc.'s First Set of Interrogatories and First Set of Requests for Production of Documents as required by order of the Board dated February 4, 2015 ("Board Order").

Regarding Supplemental Response to Interrogatory No. 8, Tigercat requested that Caterpillar "Identify five (5) representative purchasers for each of Opposer's Goods and Services sold under Opposer's Marks during the last five (5) years." While Caterpillar states that: "A number of the goods and services identified in Opposer's Registrations have applications in multiple industries," the response does not specify which goods and services can be used in each industry. Therefore, Tigercat cannot ascertain which purchasers are buying each type of good and service. Please provide a list of which industry each good and service identified in Opposer's Registrations is used in.

Regarding Supplemental Response to Interrogatory No. 12, Tigercat requested that Caterpillar "Identify all third party uses of "CAT" as a mark or name or component of a mark or name or domain name in connection with any goods or services identified in Opposer's Registrations." In its motion to compel, the Board ordered that Caterpillar must "provide a supplemental response identifying third party uses of CAT as a mark or name or a component of a mark or name, actually known to Opposer, in connection with all pleaded goods and services in the notice of opposition." The list provided by Caterpillar in its supplemental responses is incomplete. Caterpillar acknowledges in its response it includes "some of these parties." Please supplement the response to include all of the parties, as the Board did not limit its Order to

“some”. Caterpillar’s response is also improperly limited to third-party applications incorporating “cat”, as culled from a watch service for the last three years and Caterpillar served 1161 Bates numbered pages of watch service reports, over half the entire supplemental production of 2053 Bates numbered pages. Watch service reports on applications involving the word “cat” are not responsive to Interrogatory No. 12 which asked for “all third party uses of “CAT” as a mark or name or component of a mark or name”. The response is still incomplete. We look for Caterpillar to supplement its response to provide the information it was ordered to produce.

Regarding Supplemental Response to Request for Production No. 14, Tigercat requested: “Documents sufficient to identify each occasion when anyone has inquired of Opposer whether Applicant and Opposer are affiliated or related.” Caterpillar stated that it is not aware of any non-privileged, relevant, and responsive documents. Please either provide a privilege log detailing such documents or please confirm that such documents do not exist.

Regarding Supplemental Responses to Request for Production Nos. 19, 20, 24, 26, 27 and 28, Tigercat requested various types of agreements and surveys. In its February 4, 2015 Order, the Board ordered Caterpillar to provide a representative sampling of documents for each request. It is unclear from the production whether or not Caterpillar has produced a representative sampling. A representative sampling is one which gives examples of each type of agreement or survey requested in Request for Production Nos. 19, 20, 24, 26, 27 and 28, that Caterpillar has. Caterpillar cannot pick and choose which category or type of agreement or survey to provide and which not to provide. Caterpillar must provide a representative example of each type of agreement or survey, and if Caterpillar does not have a type of agreement or survey other than the representative documents Caterpillar has produced, Caterpillar must say so.

Specifically, in regards to Request No. 19, Caterpillar has produced a limited sponsorship agreement, three sponsorship agreements, a second level distribution intellectual property agreement and a blank trademark and service mark agreement for authorized sales and service centers. Caterpillar must confirm that there are no other types of “licenses” for Opposer’s Marks or supplement its production with representative samples of each additional type of license. Caterpillar must also include a completed trademark and service mark agreement for authorized sales and service centers, as a blank document is not a representative sample, but merely a form.

Specifically, in regards to Request No. 20, Caterpillar has stated in its response “For a number, if not all, of these coexistence agreements the Applicants agreed to withdraw their pending U.S. trademark applications and were permitted to continue use of their proposed marks, normally with a design component,” and Caterpillar has produced five agreements. Caterpillar must confirm that no other co-existence agreements were entered into that did not include such terms or supplement its production with representative samples of other co-existence agreements with other terms.

Christopher P. Foley, Esq.
March 18, 2015
Page 3

Specifically, in regards to Request Nos. 24, 26, 27 and 28, Caterpillar has produced an Excel spreadsheet which purports to be a compilation of responses regarding consumer satisfaction surveys (CAT 11089.xls). Caterpillar has produced no surveys or market research protocols. Caterpillar must provide a representative sample of:

All documents referring or relating to all market research and consumer studies done by or on behalf of Opposer or any third party related to Opposer's Marks within the last five (5) years; (RFP No. 24, as modified by Board Order);

All documents referring or relating to all purchaser recognition of Opposer's Marks within the last five (5) years; (RFP No. 26, as modified by Board Order);

All documents referring or relating to all market research and consumer studies done by or on behalf of Opposer or any third party related to the fame or recognition or awareness of Opposer's Marks within the last five (5) years; (RFP No. 27, as modified by Board Order);

All documents referring or relating to consumer recognition of Opposer's Marks within the last five (5) years; (RFP No. 28, as modified by Board Order)

If Caterpillar does not have any responsive documents to these requests, Caterpillar must say so.

Finally, please provide the Bates Numbers for which documents are intended to be responsive for each Request.

We look for Caterpillar to complete its supplemental production of all responsive information and documents no later than five (5) business days from the date of this letter. If Caterpillar does not provide its complete supplemental response in such time, we will move for sanctions for failure to comply with Board ordered discovery. See 37 CFT §2.120(g), also TBMP 527.01, M.C.I. Foods, Inc. v. Bunte, 86 USPQ 2d 1044 (TTAB 2008).

As a reminder, in providing responses to discovery requests, Caterpillar must timely disclose information, documents and things that Caterpillar intends to rely on in this proceeding. Super Valu Stores Inc. v. Exxon Corp., 11 USPQ2d 1539 (TTAB 1989).

Very truly yours,
ECKERT SEAMANS CHERIN & MELLOTT, LLC.

/s/ Candace Lynn Bell

Candace Lynn Bell

cc: Roberta Jacobs-Meadway

EXHIBIT B

March 23, 2015

Candace Lynn Bell
Eckert Seamans Cherin & Mellott, LLC
50 S 16th Street, Floor 22
Philadelphia, PA 19102-2523

VIA E-MAIL

Caterpillar Inc. v. Tigercat International Inc.
T.T.A.B. Opposition No. 91213597

Dear Counsel:

We write in regards to your March 18, 2014 letter regarding discovery.

As an initial point, we are surprised by the accusatory tone of your letter. Caterpillar undertook extensive steps to fully respond to the Board's Order, providing comprehensive supplemental responses and producing more than 2,000 new pages of production, in addition to the 11,000 pages already produced. To the extent that Tigercat had questions or concerns regarding these responses, it should have amicably raised these with Caterpillar without unwarranted threats for sanctions or a truncated response deadline.

Caterpillar addresses your individual concerns, in turn, below.

Regarding its Response to Interrogatory No. 8, Caterpillar identified the types of purchasers or classes of consumers who purchase Caterpillar's product for each of the industries covered in the asserted registrations. The individual goods and services offered for each of these industries are clearly outlined on Caterpillar's website (http://www.cat.com/en_US/products/new/by-industry.html) and have been produced to Tigercat in industry specific product brochures. Tigercat has all the information that it needs to determine which purchasers are buying each good or service.

Regarding its Response to Interrogatory No. 12, the Board's Order required Caterpillar to identify all third party uses of the "CAT" mark or name actually known to opposer. Despite the contention in your letter, neither Tigercat's discovery definitions nor the Board's Order strictly limited these to use in commerce. Accordingly, for the purpose of Caterpillar's supplemental response, the filing of a trademark application, and the maturing to registration for some of these applications, constitutes a use of the "CAT" mark or name. Caterpillar produced a comprehensive list of all "CAT" trademark applications actually known to Caterpillar that have been filed in the last three years for goods or services related to the asserted registrations.

Apart from these applications, Caterpillar identified third parties that it is aware of who are or were using "CAT" as a mark or name or component of a mark or name, who have not filed trademark applications for those terms. To the extent that Caterpillar becomes aware of additional third-party marks or names offering goods related to the asserted registrations, it will supplement its response to this interrogatory.

For its supplemental interrogatory responses, Caterpillar identified bates ranges of documents corresponding to the requested information in accordance with Fed. R. Civ. P. 33(d). No such obligation is required for requests for production, particularly as documents may be responsive to one or more request.

Regarding its Response to Request for Production No. 14, at this time, Caterpillar is not aware of responsive documents at this time. To the extent that responsive documents become available, Caterpillar will produce these documents to Tigercat or provide a privilege log identifying these communications.

For its Response to Production Nos. 19, 20, 24, 26, 27, and 28, generally speaking, Caterpillar has produced a representative sampling of relevant documents. Tigercat's allegation that Caterpillar is picking and choosing relevant categories of documents is untrue and unfounded. To the extent that Tigercat has questions about the existence of certain types of documents, Caterpillar will endeavor to answer those questions.

Regarding its Response to Request No. 19, Caterpillar has produced a representative sampling of license agreements executed in the last five years that relate to the asserted Caterpillar trademarks. As Tigercat can see from the executed agreements, Caterpillar's licensing of the asserted marks is only done on a limited basis, apart from its agreements with dealers. The terms of Second Level Distribution Intellectual Property Agreement correspond to the terms identified in the blank trademark and service mark agreement. Nevertheless, Caterpillar will investigate whether an identical version of the blank agreement has been recently executed, and, if so, will produce it.

Regarding its Response to Request No. 20, Tigercat appears to be requesting production of a co-existence agreement where the third party was permitted to maintain its pending trademark application. Caterpillar has already produced such an agreement. *See* CAT011278. Moreover, Caterpillar has also produced at least one agreement permitting a party to continue use of its standalone word mark. *See* CAT011266.

Regarding its Responses to Requests Nos. 24, 26, 27, and 28, the Board ordered Caterpillar to produce representative documents related to market research, consumer studies, and purchaser recognition for the last five years. In its interrogatory response on these topics, Caterpillar included reference to a number of independent third-party studies regarding purchaser recognition and the notoriety of the CAT mark. Where the results of these studies were accessible, Caterpillar has produced them. Otherwise, it points Tigercat to the websites identified in its response.

Candace Lynn Bell
March 23, 2015
Page 3

For the internal market research and consumers studies, Caterpillar produced its State of Brand reports representing its internal marketing evaluation of the CAT Brand. Caterpillar also produced the data from two consumer surveys being conducted by ORC International, as well as the corresponding questionnaires. To the extent that protocols or corresponding reports exist for these studies, Caterpillar will produce these documents.

Finally, as discovery for this proceeding is ongoing, Caterpillar reserves its rights to supplement any of its discovery responses to the extent that relevant information becomes available or known to Caterpillar.

In view of Caterpillar's above responses, please let us know whether it would be beneficial for the parties to discuss this matter on a telephone call.

Sincerely,

A handwritten signature in cursive script that reads "Christopher P. Foley".

Christopher P. Foley

CPF/LKJ

EXHIBIT C



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March 27, 2015

Via Email

christopher.foley@finnegan.com

Christopher P. Foley
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190-5675

Re: Caterpillar, Inc. v. Tigercat International, Inc.
Opposition No. 91213597
Deficiencies in Caterpillar's Supplemental Discovery Responses
Our File No: 303621 – 00011

Dear Chris:

This letter has reference to your March 23, 2015 letter regarding the deficiencies in Caterpillar's supplemental responses and production as ordered by the Board on February 6, 2015.

We disagree with your characterization of the tone of our March 18, 2015 correspondence which speaks for itself and is appropriate in the circumstances.

Regarding the Supplemental Response to Interrogatory No. 12, your contention that neither Tigercat nor the Board strictly limited third party use to third party use in commerce disregards the Board's Order and the definition of use in the Lanham Act and in the area of trademark law in general. As Tigercat successfully argued in its Motion to Compel, Opposer's knowledge of third party use of the term "CAT" as a mark or name or a component of a mark or name is discovery expressly permitted in TBMP §414(9). American Society of Oral Surgeons v. American College of Oral & Maxillofacial Surgeons, 201 USPQ 531, 533 (TTAB 1979) (relevant to show mark is weak), Domino's Pizza Inc. v. Little Caesar Enterprises Inc., 7 USPQ2d 1359, 1363 n.9 (TTAB 1988); See also TBMP §414 (9). The Board agreed in granting its Order to compel and stated: "Such information, based on knowledge, is discoverable under Board practice." Johnston Pump/General Valve Inc. v. Chromalloy American Corp. 10 USPQ2d 1671 (TTAB 1988). Neither Tigercat's Interrogatory No. 12 nor the Board's Order provides any basis for Caterpillar's attempt to limit its supplemental response by defining use to mean the

filing of a trademark application or the maturing to registration of some of these applications. Pages, regardless of quantity, culled from watch service reports on applications involving the word “cat” are not responsive to Interrogatory No. 12, nor the Board Order requiring Caterpillar to supplement its response to the same.

Regarding the list of eight (8) third parties also provided in Caterpillar’s supplemental response, by Caterpillar’s own admission, the list provided by Caterpillar is incomplete. Caterpillar states:

Regarding common law references, Caterpillar routinely objects to the third parties who make use of Opposer’s Marks or similar marks and names. Over the last five years, some of these parties have included: . . .

Caterpillar’s response is incomplete as Caterpillar seeks improperly to limit its response to only third party use to which it has objected, and then improperly to still further limit its response to only some of those objected to third party uses. Caterpillar’s own production further evidences the incompleteness of this list. Caterpillar has produced a product use survey script and an initial purchase survey script (CAT 011027 and CAT 011042); both of which reference BOBCAT as a competitive brand. Obviously, Caterpillar has knowledge of BOBCAT as a third party whose mark includes “CAT”, if BOBCAT is included in the survey script produced by Caterpillar. Caterpillar has clearly failed to properly respond to Interrogatory No 12. And has not complied with the Board’s Order.

Regarding Request No. 20, your contention that Tigercat is requesting production of co-existence agreements related to only pending trademark applications is inaccurate. Tigercat stands by its original request. The Board Order did not modify the original request except to add a temporal restriction. Mack Trucks, Inc. v. Monroe Auto Equipment Co., 181 USPQ 286, 287 (TTAB 1974). Caterpillar has stated in its response:

For a number, if not all, of these coexistence agreements the Applicants agreed to withdraw their pending U.S. trademark applications and were permitted to continue use of their proposed marks, normally with a design component.

Caterpillar’s attempt to limit its response to only “co-existence agreements where the third party was permitted to maintain its pending trademark application” has no basis in Tigercat’s Request No. 20 nor the Board’s Order. Co-existence agreements speak to use of the marks not just to applications for registration of a mark.

Regarding Request Nos. 24, 26, 27 and 28, your list of what Caterpillar has produced is not a proper response to the requests and does not comply with the Board's Order to supplement the responses. Mack Trucks, Inc. v. Monroe Auto Equipment Co., 181 USPQ 286, 287 (TTAB 1974). Caterpillar has produced data from customer satisfaction surveys from the years 2010 - 2014 in the format of an Excel spreadsheet purporting to be a compilation of responses. (CAT 11089xls). Caterpillar has also produced two scripts: one for a product use survey and one for initial purchase survey, both dated 2015 with internal references to 2013 (CAT 11023 - 11030 and CAT 11031 -11045). Scripts for surveys are not questionnaires as you contend in your March 23, 2015 letter. Caterpillar has still not produced any questionnaires with answers nor any underlying results from the surveys.

Caterpillar has again failed to produce any consumers surveys other than the scant production above identified. Caterpillar has produced no surveys or market research directed to or dealing with public or consumer recognition of Opposer's Marks, and the alleged fame or awareness of Opposer's Marks, as requested in Request Nos. 24, 26, 27 and 28. Caterpillar's State of the Brand reports are not market research or consumer studies. Third party stories about valuable brands are not surveys or market research directed to public or consumer awareness or recognition. Caterpillar produced the market research and consumer studies in the European Union Community Trademark Application Opposition between the parties, when it suited Caterpillar to do so. (See Exhibits 41, 43 and 45A from an Opposition filed before OHIM by Caterpillar against Tigercat, Opposition No. B2285602) If Caterpillar has not done such studies in the United States, although Caterpillar's own responses and documents suggest otherwise, Caterpillar must so state, and confirm it will not seek to rely on any such research or any other research of the type in this proceeding. Such documents were requested by Tigercat in Request Nos. 24, 26, 27 and 28 and were ordered to be produced by the Board, but Caterpillar has not produced them including:

All documents referring or relating to all market research and consumer studies done by or on behalf of Opposer or any third party related to Opposer's Marks within the last five (5) years; (RFP No. 24, as modified by Board Order);

All documents referring or relating to all purchaser recognition of Opposer's Marks within the last five (5) years; (RFP No. 26, as modified by Board Order);

All documents referring or relating to all market research and consumer studies done by or on behalf of Opposer or any third party related to the fame or recognition or awareness of Opposer's Marks within the last five (5) years; (RFP No. 27, as modified by Board Order);

All documents referring or relating to consumer recognition of Opposer's Marks within the last five (5) years; (RFP No. 28, as modified by Board Order).

Christopher P. Foley, Esq.
March 27, 2015
Page 4

With respect to your response regarding identifying ranges of Bates Numbers responsive to each interrogatory or request for production, we disagree that identifying Bates Numbers ranges as responsive for each request for production is not required. Caterpillar, as you point out in your letter, has produced over 13,000 Bates numbered pages, over 11,000 pages on DVD; along with one native format document (CAT 11089.xls) which amounts to nearly 10,000 additional pages. Such production warrants an index listing responsive Bates numbers to each document request. See Fed. R. Civ. P. 34(b)(2)(E), TBMP §406.04, fn 1, Amazon Technologies, Inc. v. Wax, 95 USPQ2d 1865, 1869 (TTAB 2010)

Regarding your offer for a telephone conference, in order to avoid any misunderstandings or misconstructions of the communications, we prefer that we address the issues in writing.

Pursuant to the Board Order, Caterpillar's supplemental responses and production were due March 6, 2015. Caterpillar has not yet complied with the Board order.

We need to know by Wednesday, April 1, 2015 what will be produced by Friday, April 3, 2015. In the production, the license agreement referenced in your response to RFP No. 19 should be included as well. To the extent Caterpillar is not prepared to provide what has been asked for and what it was ordered to produce by the Board or state clearly and unequivocally that there are no such documents or provide persuasive authority that Tigercat is not entitled to what it has asked for, we will proceed with a motion for sanctions directed to those requests as to which a dispute remains. See 37 CFR §2.120(g), also TBMP §527.01, M.C.I. Foods, Inc. v. Bunte, 86 USPQ 2d 1044 (TTAB 2008).

Very truly yours,
ECKERT SEAMANS CHERIN & MELLOTT, LLC.

A handwritten signature in blue ink, appearing to read "Candace Lynn Bell", is written over a light blue horizontal line.

Candace Lynn Bell

CLB/jfm

EXHIBIT D

April 1, 2015

Candace Lynn Bell
Eckert Seamans Cherin & Mellott, LLC
50 S 16th Street, Floor 22
Philadelphia, PA 19102-2523

VIA E-MAIL

Caterpillar Inc. v. Tigercat International Inc.
T.T.A.B. Opposition No. 91213597

Dear Counsel:

We write in regards to your March 27, 2015 letter regarding discovery.

Your letter mentions concerns regarding misunderstandings and misconstructions that may occur during a telephone call between parties to discuss these issues, and yet that appears to be the very problem that the parties are having with these written communications. Tigercat's letter insinuates (or overtly states in places) that Caterpillar's discovery responses are part of a nefarious plan to withhold discovery. No such plan exists. Caterpillar has complied with the Board's Order and promised to follow up with additional responsive documents to the extent that they exist. Tigercat's statements to the contrary are accusatory and serve as unnecessary legal posturing.

In regards to Caterpillar's Supplemental Response to Interrogatory No. 12, Caterpillar does not dispute the discovery requirements of TBMP § 414(9), namely "information concerning a party's awareness of third-party use and/or registration of the same or similar marks for the same or closely related goods or services as an involved mark, is discoverable to the extent that the responding party has actual knowledge thereof (without performing an investigation)." Caterpillar has made no attempt to limit these discovery obligations, as its construction for use includes both use in commerce and use as evidenced by the filing of a trademark application.

To the extent that third party marks containing "cat" become actually known to Caterpillar, it is done through one of three ways: 1) receipt of a watch notice; 2) identification in a dilution search that Caterpillar routinely conducts; or 3) parties separately identified through Caterpillar's business activities.

Caterpillar has produced extensive documentation in relation to the watch notices. It will produce a recently conducted dilution search by the end of week and supplement its interrogatory response accordingly. As Tigercat will note, the BOBCAT mark is identified in each of these categories. Caterpillar has never disputed having actual knowledge of the mark or attempted to limit its response from having to disclose this mark.

In regards to the third category, Caterpillar's supplemental interrogatory responses identify third parties actually known to it who have neither filed a trademark application nor own an existing registration containing "cat." Caterpillar did not limit its response to these third parties to avoid fully responding to Tigercat's request. It did so to avoid the duplication of identifying parties who own trademark registrations or pending applications. To the extent that Caterpillar identifies any additional third parties, it will supplement its response this week.

Regarding its Supplemental Response to Request No. 19, Caterpillar's March 23, 2015 letter commits to search for an executed version of CAT010061 and, to the extent that one exists, Caterpillar will produce the agreement. Caterpillar's investigation is ongoing regarding this agreement and it will attempt to provide you with an update on or before Friday, April 3rd.

The Board's Order regarding Request No. 20 required Caterpillar to produce representative co-existence agreements executed in the last five years. *See* Order pp. 9-10. Caterpillar has done this. The produced agreements are representative of the terms contained in all Caterpillar coexistence agreements executed in the last five years.

Your letter misconstrues Caterpillar's statements regarding its produced agreements. Caterpillar has not limited the scope of required production to coexistence agreements involving pending trademark applications. If Caterpillar had coexistence agreements dealing exclusively with trademark use, it would have produced a representative sample. The reality is, however, that these agreements do not exist for the required time period.

Regarding its Responses to Requests Nos. 24, 26, 27, and 28, Tigercat continues to demand the production of documents that simply do exist. Tigercat points to a marketplace study conducted for the Tigercat proceeding in Europe as evidence of market research for the United States proceeding. These are different matters involving different legal standards being litigated in different marketplaces. Your inaccurate contentions aside, no similar study (or any study at all) has been requisitioned or performed for this proceeding. Caterpillar has no intention to rely upon research that does not exist.

Caterpillar disputes Tigercat's statements regarding its State of the Brand reports and the third-party purchaser recognition studies. These documents fall squarely within the generally understood definition of market research and/or consumer studies. It should be for the Board to determine the sufficiency of this evidence to prove fame of the CAT mark, not Tigercat.

Caterpillar stated in its March 23, 2015 communication that it was investigating the existence of protocols and corresponding market reports for the produced survey data. Caterpillar's investigations remain ongoing and will provide an update as to the status of these documents by the end of the week.

Finally, Caterpillar disagrees with your position regarding the production index. Caterpillar has produced 1,100 documents in this proceeding. Pursuant to Fed. R. Civ. P. 34(b),

Candace Lynn Bell
April 1, 2015
Page 3

Caterpillar has produced these documents as they were stored in the ordinary course of business, and grouped responsive documents together wherever possible. Tigercat has demonstrated no difficulties reviewing and categorizing these 1,100 documents, as evidenced by their numerous discovery deficiency objections. In contrast, *Amazon* dealt with the identification of more than 50,000 pages of documents in response to specific document requests.

Tigercat has produced 400 documents and likewise provided neither index nor reference to specific bates numbers in their interrogatory responses. To ameliorate Tigercat's concerns, Caterpillar agrees to provide the requested index provided that Tigercat will agree to undertake the identical task. Tigercat cannot rely upon the differences in the parties' production volumes to require such a task from Caterpillar, but avoid it itself.

For the requests noted above, Caterpillar will provide you with an update of its discovery efforts by the end of the week.

We remain available for a telephone call to discuss this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christopher P. Foley".

Christopher P. Foley

CPF/LKJ

EXHIBIT E



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April 2, 2015

Via Email
christopher.foley@finnegan.com

Christopher P. Foley
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190-5675

Re: Caterpillar, Inc. v. Tigercat International, Inc.
Opposition No. 91213597
Deficiencies in Caterpillar's Supplemental Discovery Responses
Our File No: 303621 – 00011

Dear Chris:

This letter has reference to your April 1, 2015 letter regarding the deficiencies in Caterpillar's supplemental responses and production as ordered by the Board on February 4, 2015.

We disagree that Caterpillar has complied with the Board's Order. The Board ordered Caterpillar to provide supplementary responses to certain interrogatories and produce documents responsive to certain requests for production no later than March 6, 2015. As your April 1, 2015 demonstrates, Caterpillar has not provided all such responses and has not produced all such documents.

Regarding the Supplemental Response to Interrogatory No. 12, your April 1, 2015 letter acknowledges Caterpillar has yet to produce a dilution search and that Caterpillar knew about the BOBCAT mark but as of this date has not included that mark in its Supplemental Response to Interrogatory No. 12. We have reason to understand that this is not the only third party use Caterpillar has not identified. Tigercat is entitled to the full supplemental response, ordered by the Board.

Regarding Request No. 20, an undertaking to provide an update by April 3, 2015 does not comply with the Board's Order, and is not sufficient.

Christopher P. Foley, Esq.
April 2, 2015
Page 2

Regarding Request Nos. 24, 26, 27 and 28, again, an undertaking to provide an update as to the status of these documents does not comply with the Board's Order and is not sufficient. Production was ordered to be made by March 6, 2015.

If we do not have from Caterpillar responses and production which comply fully with what the Board ordered by close of business, Friday, April 3, 2015, we will proceed with a motion for sanctions directed to those requests as to which a dispute remains. See 37 CFR §2.120(g), also TBMP 527.01, M.C.I. Foods, Inc. v. Bunte, 86 USPQ 2d 1044 (TTAB 2008).

Regarding an index of production responses, Tigercat will produce an index by close of business on April 6. We expect Caterpillar to do the same.

Very truly yours,
ECKERT SEAMANS CHERIN & MELLOTT, LLC.



Candace Lynn Bell

CLB/jfm

EXHIBIT F

April 2, 2015

Candace Lynn Bell
Eckert Seamans Cherin & Mellott, LLC
50 S 16th Street, Floor 22
Philadelphia, PA 19102-2523

VIA E-MAIL

Caterpillar Inc. v. Tigercat International Inc.
T.T.A.B. Opposition No. 91213597

Dear Counsel:

We write in regards to your April 2, 2015 letter regarding discovery.

As stated in our April 1, 2015 letter, Caterpillar's discovery responses and production evidence is in compliance with Board's Order. In order to address Tigercat's concerns regarding this production, Caterpillar has amicably agreed to further supplement several of its responses.

Caterpillar is in the process of collecting and producing evidence in conjunction with its Supplemental Response to Interrogatory No. 12 and Supplemental Requests for Production Nos. 19, 24, 26, 27, and 28, and amending its responses where necessary. Caterpillar will be producing documents to Tigercat tomorrow, April 3, 2015. Due to vacation schedules and the Easter holiday, Caterpillar will require until April 8, 2015 to complete its supplemental production.

Regarding Interrogatory No. 12, Caterpillar will produce the dilution search and supplement third-party uses of "cat" within its actual knowledge that do not appear in either the watch notice or dilution searches, to the extent that additional third parties exist.

Your letter misconstrues Caterpillar's statement regarding Bobcat. Caterpillar has not attempted to limit its identification of third parties to Bobcat, but referenced Bobcat to specifically address a concern raised in your letter. Caterpillar has admitted to having actual knowledge of all applications and registrations identified in the watch notice search and the dilution search. As Bobcat appears in these searches, actual knowledge has been admitted, along with all the other references in those searches.

Regarding Request No. 20, your letter discusses the status of production of additional agreements. As Caterpillar has repeatedly stated, it has produced a representative sample of all coexistence agreements. No supplementation is necessary.

Candace Lynn Bell
April 2, 2015
Page 2

Regarding Request No. 19, Caterpillar has identified an executed version of the trademark and service license agreement that it will be producing. Due to confidentiality concerns, it needs to confer with the third party before producing this agreement. Caterpillar will attempt to produce this document tomorrow or early next week.

Regarding Request No. 24, 26, 27, and 28, Caterpillar will be producing protocols and additional market studies tomorrow. Additional reports and studies will be produced next week.

Regarding the production index, you can expect Caterpillar's index by April 10, 2015 after it has completed its updated production.

Sincerely,

A handwritten signature in cursive script that reads "Christopher P. Foley".

Christopher P. Foley

CPF/LKJ

EXHIBIT G

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>CATERPILLAR INC.,</p> <p style="text-align:right">Opposer,</p> <p style="text-align:center">v.</p> <p>TIGERCAT INTERNATIONAL INC.,</p> <p style="text-align:right">Applicant.</p>	<p>Opposition No. 91213597</p> <p>Application Serial No. 85/814,584</p> <p>Mark: TIGERCAT</p> <p>Application date: January 3, 2013</p>
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**OPPOSER'S SECOND SUPPLEMENTAL OBJECTIONS AND
RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES**

Caterpillar Inc. ("Opposer") hereby objects and responds to Tigercat International Inc.'s ("Applicant") First Set of Interrogatories.

GENERAL OBJECTIONS

1. Opposer objects to Applicant's discovery requests to the extent that they seek information that falls within the attorney-client privilege, that constitutes attorney work product, or that constitutes trial preparation material on the grounds that matter within the attorney-client privilege is outside the scope of permissible discovery and that attorney work product and trial preparation material, absent an appropriate showing, fall outside the scope of permissible discovery.
2. Opposer objects to Applicant's discovery requests to the extent they seek discovery from third parties.
3. Opposer objects to Applicant's discovery requests to the extent they seek to impose obligations beyond those required by the Federal Rules of Civil Procedure.

The general types of ultimate purchasers for Opposer's Goods and Services in the demolition and recycling industry include businesses and local, state and federal government agencies involved in demolition, material handling, waste compaction, scrap recycling, barge and truck loading, and waste transferring.

The general types of ultimate purchasers for Opposer's on-highway vehicles, parts, and services related thereto, include individuals, businesses, and local, state, and federal government agencies purchasing trucks with hauling and towing needs. These vehicles may be used as dump trucks, concrete mixers, waste carriers, or heavy haulers.

The general types of ultimate purchasers for Opposer's lift truck goods, parts, and related services include businesses involved in diverse commercial and industrial operations that have materials handling needs. These materials include everything from boxes, to crates, to concrete pipes.

INTERROGATORY NO. 9:

Identify all market research and consumer studies done by or on behalf of Opposer or any third party related to Opposer's Marks since 2000.

RESPONSE TO INTERROGATORY NO. 9:

Opposer objects to this Request to the extent it is duplicative of Interrogatory No. 11. Opposer objects to this interrogatory as overly broad and unduly burdensome to the extent that "all market research and consumer studies . . . related to Opposer's Marks" covers information and documents that are irrelevant to this proceeding. Opposer also objects to this interrogatory to the extent that it seeks information covered by the attorney-client privilege or the work-product doctrine. Opposer objects to the terms "market research" and "consumer studies" as vague, ambiguous, and indefinite because they have not been defined.

Notwithstanding this objection, to the extent this interrogatory is understood, Opposer will produce non-privileged research considered responsive to this request.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Subject to the objections and responses in Opposer's Objections and Responses to Applicant's First Set of Interrogatories and pursuant to the limitations set forth in the Board's February 4, 2015 Order, Opposer supplements its response to this request as follows.

Annually and quarterly Caterpillar produces its state of the brand reports providing information regarding Caterpillar's brand portfolio, consumer recognition of the Caterpillar brands, and steps being taken to strength and grow the Caterpillar brands. These documents have been produced at CAT010931-CAT011022, CAT011074, CAT011166-CAT011242.

Further, Caterpillar has run a number of internal surveys addressing initial customer purchases and product use. These surveys are conducted by a third-party on Caterpillar's behalf and contact customers of Opposer's Goods that were purchased through Caterpillar dealers. The studies assess customer satisfaction, with the objective of indicating to Opposer how it can improve its products and customer relationships. While the surveys cover a wide number of Opposer's Goods, customers are broken down by industry or particular market segment. As part of these surveys, customers are asked questions regarding Opposer's brands, customer's brand loyalty, and competitors within the respective marketplaces. Documents related to these surveys have been produced at CAT011023-CAT011073, CAT011089, CAT011165..

INTERROGATORY NO. 11:

Identify all market research and consumer studies done by or for Opposer or by any third party related to the fame or recognition or awareness of Opposer's Marks since 2000.

RESPONSE TO INTERROGATORY NO. 11:

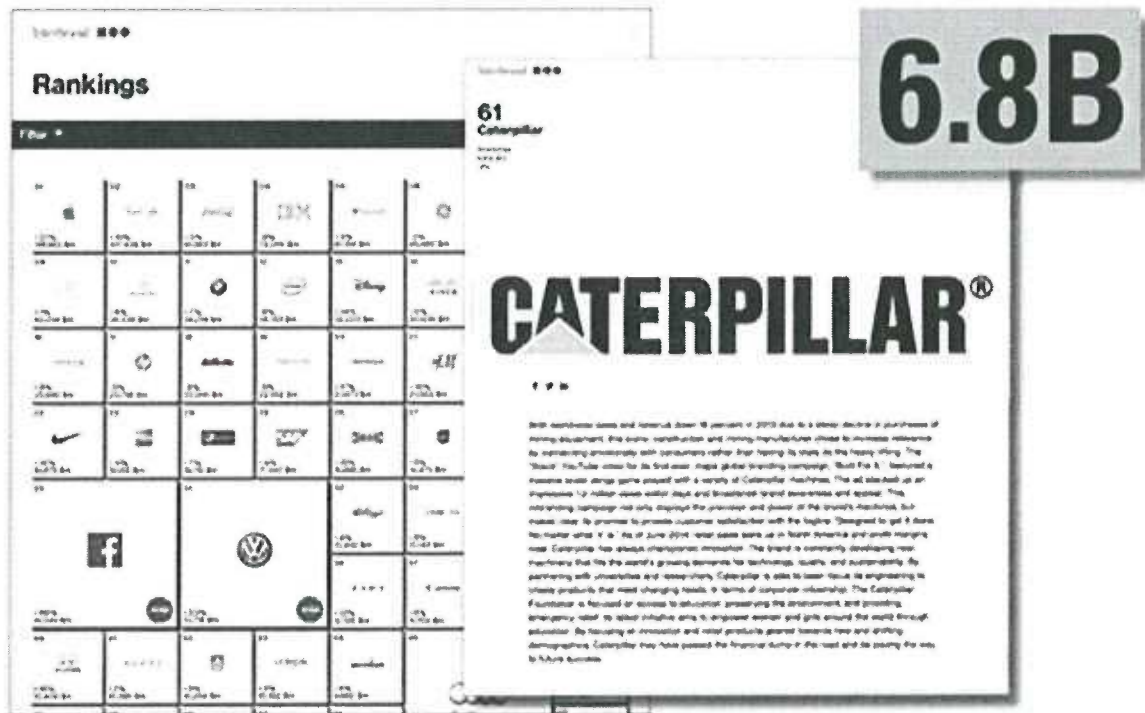
Opposer objects to this interrogatory as overly broad and unduly burdensome to the extent that “all market research and consumer studies” covers information and documents that are irrelevant to this proceeding. Opposer also objects to this interrogatory to the extent that it seeks information covered by the attorney-client privilege or the work-product doctrine. Moreover, Opposer objects to the terms “market research” and “consumer studies” as vague, ambiguous, and indefinite because they have not been defined. Notwithstanding this objection, to the extent this interrogatory is understood, Opposer will produce such non-privileged research considered responsive to this request.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:

Subject to the objections and responses in Opposer’s Objections and Responses to Applicant’s First Set of Interrogatories and pursuant to the limitations set forth in the Board’s February 4, 2015 Order, Opposer supplements its response to this request as follows.

A number of third-party brand studies are conducted each year identifying the world’s best known or most valuable brands, including for example Interbrand, Fortune, and Forbes. For example, Caterpillar has been named as a Fortune 100 company for years, including as No. 49 on the 2014 Fortune 500 list. Moreover, Fortune named Caterpillar #28 in the World’s Most Admired Companies for 2015. Forbes named Caterpillar #57 in the World’s Most Valuable Brands for 2014. Since at least 2004, Caterpillar has been ranked in Interbrand’s best global brand report identifying the top 100 brands. *See, e.g.*, CAT011090-CAT011164. The following is an excerpt from the 2014 Interbrand study -

Caterpillar ranks **61st** amongst the 100 most valuable brands.



Relying upon this widespread marketplace acknowledgement of its consumer recognition and fame, Opposer has not separately conducted any surveys regarding the fame of the Opposer's Marks in the last five years.

INTERROGATORY NO. 12:

Identify all third party uses of "CAT" as a mark or name or component of a mark or name or domain name in connection with any goods or services identified in Opposer's Registrations.

RESPONSE TO INTERROGATORY NO. 12:

Opposer objects to this request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Information about marks that have not been asserted by Opposer in this proceeding and about arguments Opposer

may have made with respect to those marks in other proceedings has no bearing on any issue in this case. *See Chicago Bears Football Club, Inc. v. 12th Man/Tennessee LLC*, 83 U.S.P.Q.2d 1073 (T.T.A.B. 2007) (The fact that the CHICAGO BEARS did not sue fan Web sites that used its name had no relevance to its opposition to registration of the mark 12th BEAR for fan jewelry, clothing, and the like. A likelihood of confusion was found.). Opposer further objects to this interrogatory to the extent that it seeks information covered by the attorney-client privilege or the work-product doctrine. Opposer further objects to this interrogatory on the ground it seeks information that is publicly available and equally available to Applicant.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:

Subject to the objections and responses in Opposer's Objections and Responses to Applicant's First Set of Interrogatories and pursuant to the limitations set forth in the Board's February 4, 2015 Order, Opposer supplements its response to this request as follows.

Opposer has utilized a trademark watch service for the CAT and CATERPILLAR marks for a number of years. A summary of references to third-party applications incorporating "cat" for the last three years has been produced at CAT011741-CAT012902. Regarding common law references, Caterpillar routinely objects to the third parties who make use of Opposer's Marks or similar marks and names. Over the last five years, some of these parties have included:

Disputed Mark	Owner
CAT REBUILT	DB Supply Company, Inc.
CAT YELLOW	Amazing Trailers, Inc.
WILDKAT ATTACHMENTS & Design	Mid-State Equipment LLC
MINECAT	Industrial Fabrication Inc.
PROCAT	Puma North America, Inc.
CAT Spindle	CAT Spindle Grinding Services
Caterpillar Crash Pad	Brooks Sports, Inc.
CAT Construction Company	CAT Construction Co., LLC

Caterpillar has reached an amicable resolution with each of these parties. Additionally, Caterpillar is aware that opposing parties have attached third party websites as exhibits in several opposition proceedings involving the CAT or CATERPILLAR marks. Caterpillar can neither confirm nor deny the authenticity of these websites. Finally, as discussed in detail in its Supplemental Response to Interrogatory Nos. 3, a number of third parties utilize the term “Big Cat” to reference Opposer or Opposer’s Goods and Services.

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:

Subject to the objections and responses in Opposer’s Objections and Responses to Applicant’s First Set of Interrogatories and pursuant to the limitations set forth in the Board’s February 4, 2015 Order, Opposer supplements its response to this request as follows.

Opposer has utilized a trademark watch service for the CAT and CATERPILLAR marks for a number of years. A summary of references to third-party applications incorporating “cat” for the last three years has been produced at CAT011741-CAT012902. Further, a search of references for third-party registrations incorporating “cat” has been produced at CAT013000-CAT021080. Caterpillar has actual knowledge of each of these references

Regarding common law references not identified in the above references, Caterpillar routinely objects to the third parties that become known to it who make use of Opposer’s Marks or similar marks and names. Over the last five years, some of these parties that have become known to Caterpillar have included:

Mark	Owner
CAT REBUILT	DB Supply Company, Inc.
CAT YELLOW	Amazing Trailers, Inc.
WILDKAT ATTACHMENTS & Design	Mid-State Equipment LLC
MINECAT	Industrial Fabrication Inc.
PROCAT	Puma North America, Inc.
CAT Spindle	CAT Spindle Grinding Services

Caterpillar Crash Pad	Brooks Sports, Inc.
CAT Construction Company	CAT Construction Co., LLC
BLACK CAT BLADES	Black Cat Blades Ltd
MAICAT	MAIT USA Corp.
CAT mailbox	Silent Roar Exhaust, Inc.
C.A.T. Construction	C.A.T. Construction, Inc.
GAT logo	A. J. Marsh
CAT50	The Home Depot U.S.A., Inc.
Cat Roofing and CAT Contracting	Cat Roofing
C.A.T.	Plasser American Corporation
CATERPILLAR LANDSCAPING	Caterpillar Landscaping Maintenance

Caterpillar has either reached an amicable resolution with these parties or elected not to approach them due to sufficient differences between the parties' marks and/or goods or services.

Additionally, Caterpillar is aware that opposing parties have attached third party websites as exhibits in several opposition proceedings involving the CAT or CATERPILLAR marks.

Caterpillar can neither confirm nor deny the authenticity of these websites. Finally, as discussed in detail in its Supplemental Response to Interrogatory Nos. 3, a number of third parties utilize the term "Big Cat" to reference Opposer or Opposer's Goods and Services.

INTERROGATORY NO. 16:

Describe in detail each occasion when anyone has inquired of Opposer whether Applicant and Opposer are affiliated or otherwise related.

RESPONSE TO INTERROGATORY NO. 16:

Opposer objects to this interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege and/or work product doctrine. Opposer also objects to this interrogatory as overly broad and unduly burdensome in that it requests identification of "each occasion" such communications, which could information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this interrogatory as premature to the extent that Opposer's investigations are ongoing and that

Caterpillar has produced sales information in both dollars and units sold for Opposer's Goods and Services from 2009 - 2014, as such information is kept in the ordinary course of business at CAT012929.

Dated: April 3, 2015

Respectfully submitted,

/Christopher P. Foley/

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Attorneys for Opposer
Caterpillar Inc.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing OPPOSER'S SECOND SUPPLEMENTAL OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES was served via e-mail, upon counsel for Applicant, on April 3, 2015:

CANDACE LYNN BELL
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PHILADELPHIA, PA 19102-2523

/Jenny Macioge-Reilly/
Case Manager